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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ALVON SHONEER SURRELL, SR.,

Case No. 3:17-cv-00184-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 STATE OF NEVADA, *et al.*,

13 Respondents.

14 Petitioner has submitted an application to proceed *in forma pauperis* (ECF No. 1)
15 and a petition for a writ of habeas corpus. The court finds that petitioner is unable to pay
16 the filing fee. The court has reviewed the petition, and the court will dismiss this action.
17 See 28 U.S.C. § 2243.

18 Petitioner is a pre-trial detainee, and he is a defendant in two cases before the
19 Second Judicial District Court of the State of Nevada, numbers CR16-1240¹ and CR16-
20 1245.² He alleges that former counsel, who is now a judge, provided ineffective
21 assistance, that bail is excessive, and that police officers violated his rights guaranteed
22 by the Fourth Amendment.

23 It is possible that petitioner sent the petition to the wrong court. The first page of
24 the petition is captioned for the Second Judicial District Court, and petitioner invokes Nev.

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26 ¹ https://www.washoecourts.com/index.cfm?page=casedesc&case_id=CR16-1240
(report generated August 24, 2017).

27 ² https://www.washoecourts.com/index.cfm?page=casedesc&case_id=CR16-1245
28 (report generated August 24, 2017).

1 Rev. Stat. § 34.360, not a provision of federal law, for why the petition should be
2 considered. This court will consider the petition. In any event, this court needs to dismiss
3 the petition, and petitioner needs to present his claims first to the state courts.

4 Federal courts should abstain from intervening in pending state criminal
5 proceedings unless there are the extraordinary circumstances of a great and immediate
6 danger of irreparable harm. *Younger v. Harris*, 401 U.S. 37, 45- 46 (1971); *see also Exh.*
7 *Parte Royall*, 117 U.S. 241, 251 (1886). A court “must abstain under *Younger* if four
8 requirements are met: (1) a state-initiated proceeding is ongoing; (2) the proceeding
9 implicates important state interests; (3) the federal plaintiff is not barred from litigating
10 federal constitutional issues in the state proceeding; and (4) the federal court action would
11 enjoin the proceeding or have the practical effect of doing so, i.e., would interfere with the
12 state proceeding in a way that *Younger* disapproves.” *San Jose Silicon Valley Chamber*
13 *of Commerce Political Action Committee v. City of San Jose*, 546 F.3d 1087, 1092 (9th
14 Cir. 2008).

15 The four *Younger* factors are satisfied here. First, criminal proceedings are
16 ongoing in state court. Second, prosecution of crimes is an important state interest. See
17 *Kelly v. Robinson*, 479 U.S. 36, 49 (1986); *Rose v. Mitchell*, 443 U.S. 545, 585 (1979);
18 *Younger*, 401 U.S. at 43-44. Third, petitioner may raise his constitutional claims in the
19 state courts, by motions before the trial court, on appeal, or in a post-conviction habeas
20 corpus petition. Fourth, if this court granted petitioner relief, it would result in the
21 termination of his state-court criminal action, which is an action that *Younger* disapproves.
22 Because all four requirements are met, this court must abstain from considering the
23 petition.

24 Reasonable jurists would not find this conclusion to be debatable or wrong, and
25 the court will not issue a certificate of appealability.

26 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.
27 1) is granted. Petitioner need not pay the filing fee of five dollars (\$5.00).
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1 It is further ordered that the clerk of the court will file the petition for a writ of habeas
2 corpus.

3 It is further ordered that this action is dismissed without prejudice. The clerk of the
4 court will enter judgment accordingly.

5 It is further ordered that a certificate of appealability is denied.

6 DATED THIS 25th day of August 2017.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE